

**REMARKS**

Claims 56-75 are pending in the application. Claims 1-55 have been cancelled. New Claims 68-75 have been added. Claims 56-67 stand rejected and no claims have been allowed. Claim 56 has been amended.

**Claim Rejections – 35 U.S.C. § 112**

In order to expedite prosecution, Applicant's have amended independent Claim 56 to delete the portion rejected by the Examiner under 35 U.S.C. § 112, rendering the Examiner's rejection moot.

**Specification**

In order to expedite prosecution, Applicant's have amended Claims 56, 61, and 64 to delete the phrase "ring-shaped," rendering the Examiner's rejection moot.

**Claim Rejections – 35 U.S.C. § 102**

Claims 56, 58-60, and 62-66 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,039,764 to Pottenger et al ("Pottenger '764").

Applicants respectfully submit that amended independent Claim 56 is not anticipated by Pottenger '764, as Pottenger '764 fails to disclose each and every limitation of amended independent Claim 56. Specifically, amended independent Claim 56 calls for a tibial augment system including, *inter alia*, a tibial implant comprising a tibial plate and a tibial post extending from the tibial plate, and a tibial augment including a tibial augment comprising an annular body, the annular body defining an interior wall and an exterior wall, the exterior wall of the tibial augment sized to fit within a cortex of the tibia, the interior wall of the tibial augment defining a passageway sized to accept the tibial post therethrough, the tibial augment having a proximal face with a proximal opening, the proximal opening providing access to the passageway, the tibial augment *terminating distally at a distal face with a distal opening*, the distal opening providing access to the passageway, whereby, with the tibial post positioned through the

proximal opening of the tibial augment into the passageway and extending distally through the distal opening of the tibial augment, the tibial augment is positioned about the tibial post and the tibial post extends from the tibial augment.

Referring to Pottenger '764, Pottenger '764 discloses, as shown in Fig. 43, tibial component 218 including fixation shaft 220. Fixation shaft 220 has recess 222 configured to receive engagement post 228 of bearing element 226 (Fig. 34) therein. Thus, fixation shaft 220 includes an opening configured for receipt of engagement post 228 and an opposing closed end configured for receipt within the intramedullary canal of the tibia.

In contrast to amended independent Claim 56, Pottenger '764 does not disclose or suggest fixation shaft 220 terminating distally at a distal face having a distal opening. In fact, fixation shaft 220 of Pottenger '764 terminates at a closed end that is received within the tibia. In forming the rejection, the Examiner relies on a small portion of tibial component 218 as defining the tibial augment called for in independent Claim 56. However, the section of tibial component 218 that was arbitrarily selected by the Examiner does not *terminate* distally, as it is an integral portion of tibial component 218. Thus, the only portion of tibial component 218 that terminates distally is the closed, posterior end of tibial component 218, which lacks a distal opening.

For at least the foregoing reasons, Applicants respectfully submit that amended independent Claim 56, as well as Claim 58-60 and 62-66, which depend therefrom, are not anticipated by 35 U.S.C. § 102(b).

#### **Claim Rejections – 35 U.S.C. § 103**

Claim 57 is rejected under 35 U.S.C. § 103(a) as being obvious over Pottenger '764 in view of U.S. Patent No. 6,136,029 to Johnson et al ("Johnson '029"). In forming the rejection, the Examiner relies on Pottenger '764 as disclosing each and every limitation of Claim 56, from which Claim 57 depends. However, for at least the reasons set forth above, Pottenger '764 fails to disclose each and every limitation of amended independent Claim 56. The Examiner's further citation of Johnson '029 fails to overcome this deficiency, as neither Pottenger '764 nor

Johnson '029, either alone or in combination, discloses or suggests each and every limitation of amended independent Claim 56.

For the foregoing reasons, Applicants respectfully submit that Claim 57, which depends from amended independent Claim 56, is not obvious over Pottenger '764 in view of Johnson '029.

Claim 67 is rejected under 35 U.S.C. § 103(a) as being obvious over Pottenger '764 in view of U.S. Patent No. 4,822,366 to Bolesky ("Bolesky '366"). In forming the rejection, the Examiner relies on Pottenger '764 as disclosing each and every limitation of amended independent Claim 56, from which Claim 67 depends. However, for at least the reasons set forth above, Pottenger '764 fails to disclose each and every limitation of amended independent Claim 56. The Examiner's additional citation of Bolesky '366 fails to overcome this deficiency, as neither Pottenger '764 nor Bolesky '366, either alone or in combination, discloses or suggests each and every limitation of amended independent Claim 56, including a tibial augment having a proximal face with a proximal opening, the proximal opening providing access to the passageway, the tibial augment *terminating distally at a distal face with a distal opening*.

Thus, for at least the foregoing reasons, Applicants respectfully submit that Claim 67, which depends from amended independent Claim 56, is not obvious over Pottenger '764 in view of Bolesky '366.

#### **New Claims**

New Claims 68-75 have been added. New Claim 68 depends from independent Claim 56 and is patentable over the prior art for at least the reasons set forth above with respect to independent Claim 56.

New Claim 68 is patentable in view of the prior art as the prior art fails to disclose or suggest a tibial augment system for a knee joint including a tibia, the system including a tibial plate; a tibial post configured to extend from the tibial plate; and a tibial augment comprising an annular body, the annular body defining an interior wall and an exterior wall, the exterior wall of the tibial augment sized to fit within a cortex of the tibia, the interior wall of the tibial augment

defining a passageway sized to accept the tibial post therethrough, the tibial augment having an anterior face with an anterior opening, the anterior opening providing access to the passageway, the tibial augment having a posterior face with a posterior opening, the posterior opening providing access to the passageway, whereby, with the tibial post positioned through the anterior opening of the tibial augment into the passageway and extending posteriorly through the posterior opening of the tibial augment, the tibial augment is positioned about the tibial post and the tibial post extends from the annular body of the tibial augment.

New Claims 69-75 depend from new independent Claim 68 and are patentable for at least the reasons set forth above with respect to new independent Claim 68.

Thus, for at least the foregoing reasons, Applicants respectfully request allowance of new Claims 68-75.

#### **Conclusion**

It is believed that the above represents a complete response to the Office Action and reconsideration is requested. Specifically, Applicants respectfully submit that the current application is in condition for allowance and such action is earnestly solicited.

In the event Applicants have overlooked the need for an additional extension of time, payment of fee, or additional payment of fee, Applicants hereby petition therefor and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels.

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Should the Examiner have any further questions regarding any of the foregoing, he is respectfully invited to telephone the undersigned at 260-424-8000.

Respectfully submitted,



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May 28, 2008

Date